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February 11, 2011

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Sandwich Isles Communications, Inc. Petition for Declaratory Ruling  
WC Docket No. 09-133

Notice of Ex Parte

Dear Ms. Dortch:

On February 10, 2011, Sandwich Isles Communications, Inc. ("SIC") counsel Dana Frix and the undersigned, along with Walter Raheb of Roberts Raheb and Gradler, LLC met with Christi Shewman, Lynne Engledow, and Jennifer Prime of the Commission's Wireline Competition Bureau and Albert Lewis and Pamela Arluk from the Pricing Policy Division to discuss SIC's position in the above-referenced proceeding, as detailed in the attached handout which has been redacted pursuant to the protective order in this proceeding.

Should additional information be necessary in connection with this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ James A. Stenger

James A. Stenger  
Counsel to Sandwich Isles Communications, Inc.

Enclosure

cc: Edward Lazarus  
Austin Schlick  
Sharon Gillett  
Marcus Maher  
Christi Shewman  
Lynne Engledow  
Jennifer Prime  
Albert Lewis  
Pamela Arluk  
Gregory Vogt  
David Lawson

**Public Version**

**Sandwich Isles Communications, Inc.  
Petition for Declaratory Ruling  
WC Docket No. 09-133**

**February 10, 2011**

**Dana Frix, James Stenger of Chadbourne & Parke LLP  
Walter Raheb of Roberts Raheb & Gradler LLC**

CHADBOURNE  
& PARKE LLP

## Petition for Reconsideration

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- **Filed by SIC on October 29, 2010**
- Comments filed by SIC, NECA, AT&T, Verizon and Qwest on December 6, 2010
- No reply comments were filed in response to SIC's Comments
- **In support of 100% recovery, SIC demonstrates:**
  - SIC properly accounts for its costs and broadband is a regulated service
  - Under NECA's Spare Fiber Guidelines ("SFG") Paniolo is per se "used and useful," SIC is entitled to 100% recovery and no equitable analysis is needed
  - The Bureau's equitable analysis should have included the SFG, considered additional HHL factors, and given further weight to Commission precedent: *PSV Cable I*, *Comsat*, *AT&T Billing*, *Separations Reform Order*, *Amendment of Part 65*, *SAW cases*, *Broadband Order*
- **Requested relief:**
  - Percentage of recovery on the Paniolo "lease expenses subject to dispute" increased from 50 percent
  - Inclusion of 100% of Paniolo engineering costs (one-time payment)
  - Full recovery of annual insurance and maintenance expenses

# Undisputed Facts: Proper Cost Accounting/Spare Fiber Guidelines

## Proper Cost Accounting:

- Contrary to AT&T's Application for Review, SIC may elect to treat its broadband transmission as a regulated service and include such costs in the NECA Pool
- SIC requests that Paniolo costs be allocated to SIC's revenue requirement, subject to Parts 36 and 64 of the Commission's Rules
- NECA has not identified improper accounting as grounds for excluding Paniolo costs (see May 20, 2009 letter from NECA)

## Spare Fiber Guidelines:

- NECA had SFG in place since 2004
- NECA applies the SFG, not a "used and useful" analysis
- All NECA members except SIC recover the cost of their spare fiber
- Both the FCC and NECA (through the SFG) recognize that carriers use a 1/3 in-use, 2/3 spare ratio for fiber deployment
- SIC is presently using [REDACTED] for regulated services
- NECA was aware that SIC planned [REDACTED] since at least 2008

## Spare Fiber Guidelines/Equitable Analysis

### Spare Fiber Guidelines, cont.:

- This information on SIC's in-use fiber was omitted from the Order
- The Order recognizes that 12 fibers constitute 98% of construction costs
- [REDACTED]  
SFG dictate that SIC is entitled to 100% recovery

### Equitable Analysis:

- Omits the SFG under the "Inclusion of Spare Capacity" factor
- SIC's reliance on NECA's assurances that Paniolo costs would be included in the NECA Pool, and what effect lost NECA funding has on SIC, should be included as a 5th equitable factor

- Does not fully consider FCC precedent:

- *PSV Cable I*
  - 100% recovery for partial use
  - *PSV Cable II* inapplicable
- *Comsat*
  - Recovery for 100% of spare capacity
- *AT&T Billing*
  - Avoided costs relevant in "used and useful" analysis
- *Separations Reform Order*
  - 2/3 of all fiber is spare and recoverable
- *Amendment of Part 65*
  - *De minimis* costs exempt from "used and useful" analysis
- *The SAW cases*
  - SIC participates in NECA to serve HHL
- *Broadband Order*
  - Broadband can be a regulated service